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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, December 13, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

V.
PROFITEK, INC., and
EDWARD GEORGE SMITH,
Defendants

CASE NOS. SEC990069
SEC990070

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising has instituted an investigation of the Defendants, Profitek, Inc. ("Company") and Edward George Smith ("Smith"), pursuant to Virginia Code § 13.1-518.

As a result of its investigation, the Division alleges that (i) Company and Smith employed a scheme to defraud investment advisory clients in violation of Virginia Code § 13.1-503A1, (ii) in the solicitation of advisory clients Company and Smith made untrue statements of material fact and omitted to state a material fact in violation of Virginia Code § 13.1-503B, (iii) Company charged clients a termination fee that was an unreasonable advisory fee in light of the fees charged by other investment advisors providing essentially the same services in violation of Virginia Code § 13.1-503A4 and Rule 21 VAC 5-80-200A10, and (iv) Smith charged clients a termination fee that was an unreasonable advisory fee in light of

the fees charged by other investment advisor representatives providing essentially the same services in violation of Virginia Code § 13.1-503A4 and Rule 21 VAC 5-80-200B10. The Defendants neither admit nor deny these allegations, but admit the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from the allegations made against them, the Defendants have offered, and agreed to comply with, the following terms and undertakings:

(1) Within twenty-one (21) days of the date of this Settlement Order, Company and Smith will reimburse each Virginia client all termination fees plus six percent interest per annum that Company and Smith received from these clients from the date of receipt;

(2) Evidence of compliance with the provisions of paragraph (1) above will be filed with the Division by Smith within seven (7) days from the date payment is made to the clients; that such evidence will be in the form of an affidavit, executed by Smith which will contain the following information: (i) the date that the payment was made to each client, (ii) the amount in termination fees that was paid to each client, and (iii) the amount of interest that was paid to each client;

(3) Company and Smith will be permanently enjoined from violating §§ 13.1-503A1, 13.1-503B and 13.1-503A4 of the Code of Virginia and Rules VAC 5-80-200A10 and VAC 5-80-200B10;

(4) Company and Smith will provide all current clients and all former Virginia clients with a copy of this Settlement Order;

(5) Company and Smith will provide each Virginia client, who was charged a termination fee but failed to pay the termination fee, a clearly delineated credit for the full amount of the termination fee plus any additional penalty charges, utilizing Company letterhead;

(6) Company and Smith will provide each Virginia client, who receives a credit as a result of paragraph (5) above, a statement that neither Company nor Smith will pursue the collection of these fees in the future;

(7) Evidence of compliance with the provisions of paragraphs (5) and (6) above will be filed with the Division by Smith within thirty (30) days of the date of this Order; that such evidence will be in the form of copies of the credits and statements that are sent to each client;

(8) Company and Smith will remove any judgment(s) that have been filed in any court against any client in the effort to collect any termination fees;

(9) Evidence of compliance with the provisions of paragraph (8) above will be filed with the Division by Smith within thirty (30) days of the date of this Order; that such evidence will be in the form of an affidavit, executed by Smith,

which will contain the following information: (i) the name of each client against whom a judgment was entered, (ii) the court name and location in which a judgment was filed, (iii) the date on which a judgment was filed, (iv) the court name and location for which a petition was filed to remove the judgment, (v) the date on which the judgment was successfully removed, and (vi) a copy of the filing used for the removal of the judgment;

(10) Pursuant to § 13.1-521 of the Code of Virginia, Company will pay to the Commonwealth a penalty of sixty-five thousand dollars (\$65,000), with interest thereon at the rate of nine percent per year until paid, and Smith will pay to the Commonwealth a penalty of sixty-five thousand dollars (\$65,000), with interest thereon at the rate of nine percent per year until paid, provided that these penalties will be suspended and remitted upon the condition that Company and Smith comply with the provisions of paragraphs (1), (2), (4), (5), (6), (7), (8), and (9) above. Should Company and Smith fail to comply with paragraphs (1), (2), (4), (5), (6), (7), (8), and (9) above, then the full penalty and interest herein imposed shall become immediately due and payable; and,

(11) It is recognized and understood that if the Defendants, or either of them, fail to comply with any of the foregoing terms and undertakings, then the Commission reserves the right to take whatever action it deems appropriate, including, but not limited to, instituting a show cause proceeding under the Virginia Securities Act or other applicable statutes based on such failure to

comply, on the allegations contained herein and/or such other allegations as are warranted, and the Defendants will not contest the exercise of the right reserved.

The Division has recommended that the Defendants' offer of settlement be accepted pursuant to the authority granted to the Commission in Virginia Code § 12.1-15.

NOW, THEREFORE, IT IS ADJUDGED AND ORDERED:

(1) That, pursuant to the authority granted to the Commission in Virginia Code § 12.1-15, the Defendants' offer of settlement is accepted;

(2) That the Defendants fully comply with the aforesaid terms and undertakings of the settlement;

(3) That, pursuant to Virginia Code § 13.1-521, Company will pay to the Commonwealth a penalty of sixty-five thousand dollars (\$65,000), with interest thereon at the rate of nine percent per year until paid, and Smith will pay to the Commonwealth a penalty of sixty-five thousand dollars (\$65,000), with interest thereon at the rate of nine percent per year until paid, provided that these penalties will be suspended and remitted upon the condition that Company and Smith comply with the provisions of paragraphs (1), (2), (4), (5), (6), (7), (8), and (9) above. Should Company and Smith fail to comply with the foregoing provisions and undertakings, then the full amount of penalty and interest imposed herein shall become immediately due and payable;

(4) That the Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding as described above, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

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SEC990070

Defendants

ADMISSION AND CONSENT

The Defendants, Profitek, Inc. and Edward George Smith, admit the jurisdiction of the State Corporation Commission of Virginia as to the parties and the subject matter hereof and, without admitting or denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consent to the form, substance and entry of the foregoing Settlement Order.

The Defendants further state that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Settlement Offer.

Profitek, Inc.

Dated: _____

By: _____

Title: _____

Dated: _____

Edward George Smith